

Local Joint Executive Board of Las Vegas, Culinary Workers Union Local 226, and Bartenders Union Local 165 affiliated with Hotel Employees and Restaurant Employees International Union, AFL-CIO and Casino Royale, Inc.
Cases 28-CB-4159, 28-CB-4203, and 28-CB-4261

February 27, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND HIGGINS

This case involves numerous allegations that the Respondent violated Section 8(b)(1)(A) of the Act during an informational picketing campaign on the sidewalk at entrances to the Employer's casino.¹ The judge found that the Respondent's agents unlawfully engaged in several threatening acts and one physical assault. He dismissed other allegations of additional threats or assaults.

The Board has considered the decision and the record in light of the exceptions² and briefs and has decided to affirm the judge's rulings, findings,³ and conclusions. We shall include a new Order and notice that modify the judge's recommended remedial provisions in accord with *Indian Hills Care Center*, 321 NLRB 144 (1996).

In agreeing with the judge's conclusion that the Respondent unlawfully videotaped or created the appearance of videotaping an employee, we find that this conduct, accompanied by abusive remarks from the Respondent's pickets, would reasonably tend to restrain or coerce the targeted employee in the exercise of her Section 7 rights. Furthermore, we agree with the judge's finding that the Respondent's pickets actually intended to coerce the employee target of their videotaping. Proof of actual intent to coerce, although not essential to finding an 8(b)(1)(A) violation, can certainly be a factor supporting such a finding. Finally,

¹ On February 23, 1996, Administrative Law Judge Burton Litvak issued the attached decision. The Respondent and Charging Party filed exceptions and supporting briefs. The General Counsel, Respondent, and Charging Party filed answering briefs. The Respondent and Charging Party filed answering briefs. The Charging Party also filed a motion to strike portions of the Respondent's brief in support of exceptions. The Respondent filed an opposition to this motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² We deny the Charging Party's motion to strike portions of the Respondent's brief in support of exceptions.

³ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

we note that the Respondent's exceptions challenge only the judge's factual findings underlying this violation. They do not challenge the legal standard applied by the judge.

We find no need to pass on the Charging Party's exceptions to the judge's failure to find additional unlawful threats and coercion by the Respondent's pickets. Such findings would be merely cumulative of the 8(b)(1)(A) violations found, based on similar picket line incidents, and would not materially affect the remedy for such unlawful conduct.

ORDER

The National Labor Relations Board orders that the Respondent, Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226 and Bartenders Union, Local 165 affiliated with Hotel Employees and Restaurant Employees International Union, AFL-CIO, Las Vegas, Nevada, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Warning that it knows where employees of the Casino Royale live and that it will get them, thereby implicitly threatening employees of the Casino Royale with bodily harm because they fail to support Respondent's picketing and continue to work for the Casino Royale.

(b) Videotaping or creating the appearance of videotaping employees of the Casino Royale, who are performing their regular job duties, in order to cause said employees to fear retribution for failing to support Respondent's picketing and continuing to work for the Casino Royale.

(c) Physically assaulting potential customers of the Casino Royale at or near its picket line in the presence of employees of the Casino Royale, thereby causing said employees to fear retribution for failing to support Respondent's picketing and continuing to work for the Casino Royale.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its meeting hall and office copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 9, 1994.

(b) Sign and return to the Regional Director of Region 28 sufficient copies of the notice for posting by the Casino Royale, if willing, at all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT state that we know where employees of the Casino Royale live or that we are going to get them, thereby implicitly threatening employees with bodily harm because they fail to support our picketing and continue to work for the Casino Royale.

WE WILL NOT videotape or create the appearance of videotaping employees of the Casino Royale, who are performing their regular job duties, in order to cause employees to fear retribution for failing to support our picketing and continuing to work for the Casino Royale.

WE WILL NOT physically assault potential customers of the Casino Royale at or near our picket line in the presence of employees of the Casino Royale, thereby causing employees to fear retribution for failing to support our picketing and continuing to work for the Casino Royale.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

LOCAL JOINT EXECUTIVE BOARD OF
LAS VEGAS, CULINARY WORKERS
UNION, LOCAL 226 and BARTENDERS
UNION, LOCAL 165, AFFILIATED WITH
HOTEL EMPLOYEES INTERNATIONAL
UNION AFL-CIO

Debra J. Morgan, Esq., for the General Counsel.

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& Holsberry), of Las Vegas, Nevada, for the Respondent.

Celeste M. Wasielewski, Esq. (Powell, Goldstein, Frazer & Murphy), of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK Administrative Law Judges. The original and first amended unfair labor practice charges in Case 28-CB-4159 were filed by Casino Royale, Inc. (the Charging Party), on June 15 and 27, 1994, respectively, and, based upon the unfair labor practice charges, on July 29, 1994,¹ the Regional Director of Region 28 of the National Labor Relations Board (the Board) issued a complaint against Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226, and Bartenders Union, Local 165, affiliated with Hotel Employees and Restaurant Employees International Union, AFL-CIO (the Respondent). The unfair labor practice charge in Case 28-CB-4203 was filed by the Charging Party on August 9, 1994, and, based upon the unfair labor practice charge, the Regional Director of Region 28 issued a complaint against Respondent on September 30. The unfair labor practice charge in Case 28-CB-4261 was filed by the Charging Party on October 26, 1994, and, based upon the filing of the unfair labor practice charge, on February 21, 1994, the Regional Director of Region 28 issued a complaint against Respondent. The complaints allege that Respondent engaged in various acts and conduct, violative of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). Respondent timely filed answers to the complaints, denying that it engaged in any conduct violative of the Act. On February 21, 1995, the Regional Director for Region 28 issued an order consolidating the above-captioned matters for trial, and, on March 14, 15, and 16, 1995, the cases came to trial before me in Las Vegas, Nevada. At the trial, all parties were afforded the opportunity to call witnesses, to examine and cross-examine all witnesses, to offer into the record all relevant evidence, to argue their respective legal positions orally, and to file posthearing briefs. The latter documents were filed by counsel for all parties, and each has been carefully

¹Unless otherwise stated, all events herein occurred during calendar year 1994.

considered. Accordingly, based upon the record as a whole,² including my observation of the testimonial demeanor of each of the several witnesses and the posthearing briefs, I issue the following

FINDINGS OF FACT

I. JURISDICTION

The record establishes that the Charging Party maintains a place of business in Las Vegas, Nevada, where it is engaged in the operation of a gaming casino, hotel, and restaurant facility; that, during 1994, from the normal course and conduct of its above-described business operations, the Charging Party derived gross revenues in excess of \$500,000; and that, during 1994, the Charging Party purchased and received services, including engineering services, valued in excess of \$50,000, directly from sources, which are located outside the State of Nevada.

II. LABOR ORGANIZATION

Respondent admits that it is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ISSUES

There is no dispute that Respondent has engaged in picketing in front of the Charging Party's Las Vegas, Nevada gaming casino, hotel, and restaurant facility since December 31, 1991. Collectively, the complaints in Cases 28-CB-4159, 28-CB-4203, and 28-CB-4261 allege that, commencing in March and continuing through October 1994, in front of or near the Charging Party's above facility, through the acts and conduct of individuals who were picketing on its behalf, Respondent engaged in various acts and conduct, violative of Section 8(b)(1)(A) of the Act. Generally, the complaints describe three types of conduct allegedly violative of the foregoing provision of the Act—videotaping of and threats of bodily harm to patrons, managers, and employees; so-called bullhorn assaults upon pedestrians, patrons, employees, and security guards, and physical assaults upon patrons and employees. Besides denying that any of the foregoing acts and conduct occurred, Respondent argues that, assuming the conduct did occur, inasmuch as its picketing at the Charging Party's gaming casino, hotel, and restaurant facility was informational in nature, privileged by the publicity picketing proviso to Section 8(b)(7)(C) of the Act, and as there is no record evidence that said misconduct was directed at, or had any effect upon, the Charging Party's employees' exercising of their Section 7 rights, there can be no violation of Section 8(b)(1)(A) of the Act. Respondent further argues that many of the allegedly unlawful acts and conduct were merely tortious in nature or resulted from personal animosity and, thus, did not arise to violations of the Act.

²Counsel for the Charging Party filed a motion to correct the transcript, which, I find, has merit and, therefore, shall be granted. Counsel for the Charging Party has also filed a motion to strike a portion of counsel for Respondent's posthearing brief, which I deny.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Background

As stated above, the Charging Party operates a gaming casino, hotel, and restaurant facility (Casino Royale), which opened for business on January 1, 1992, in Las Vegas, Nevada, and is located on that portion of Las Vegas Boulevard known as "the strip." The record establishes that Las Vegas Boulevard, which runs in a north-south direction, is a six-lane road and is densely congested throughout the day and that the Casino Royale, which is on the east side of the road, is bordered on the south by Harrah's Hotel & Casino and located directly across the street from the Mirage Hotel. The sidewalk, which runs along both sides of Las Vegas Boulevard, is approximately 10 to 20 feet wide and is among the most heavily traveled and crowded walkways in the country; during the first 6 months of 1994, including the period from March through July, while the Casino Royale was undergoing extensive remodeling construction work, the sidewalk in front of the casino was completely enclosed by wood panels in order to protect patrons and passing pedestrians. The record further establishes that, prior to July 1994, there were two entrances into the Casino Royale's casino (the north and south entrances) from the Las Vegas Boulevard sidewalk; that each entrance consisted of two sets of double doors; that, during the construction work, 15-foot long "V" shaped entryways, leading from the sidewalk to each of the entrance doorways, were erected; and that painted lines on the sidewalk at the opening of each entryway indicated the Casino Royale's property line. Moreover, with the completion of the construction work, which involved expansion and remodeling of the gaming casino, in July, the two original casino sidewalk entrances were closed and three new casino entrances, which consist of double-glass doors, with the center entrance having pillars a few feet in front of the doorway, were opened onto the Las Vegas Boulevard sidewalk; and the Casino Royale placed planters, which are located a few feet from the curb, on the sidewalk in front of the new casino entrances. Finally, the noise level outside of the Casino Royale appears to be quite loud. Thus, in addition to the noise generated by the heavy street traffic and by sidewalk pedestrians, the Casino Royale advertises its casino and restaurant features via a continuously operating recording, which is broadcast to sidewalk pedestrian traffic over a loud speaker system, and a volcano, operated by the Mirage Hotel, thunderously "erupts" four times an hour for 3 to 4 minutes.

The record reveals that, at all times material, the Casino Royale has maintained an elaborate videotape surveillance system with video cameras, which are connected to video recorders, over the doorways at all sidewalk entrances to the casino and restaurant facility. Thus, during the remodeling construction work on the casino, according to Denzil Sandquist, the director of surveillance at the Casino Royale, "there were two dedicated cameras positioned in each doorway." The cameras recorded in black and white, were positioned underneath the overhanging roof for the construction, and, according to Robert Shafer, the chief of security at the Casino Royale, were aimed in order to get "full coverage of

the . . . entryway" straight out from the doors.³ Sandquist further testified that, at the conclusion of the construction work and upon the opening of the three new sidewalk entrances, "pan and tilt" cameras⁴ were installed over the pillared main entrance and over the new southern doorway and that, later in 1994, four additional entrance surveillance cameras were installed "so they covered the whole sidewalk." The record further reveals that all of the Casino Royale's videotaping equipment is located in a secured room, known as the surveillance room; that all surveillance cameras and video recorders operate continuously unless the power goes down or they break down; that the videotapes, which are utilized for entrance surveillance, are 8-hour tapes and are recycled continuously; that suspicious incidents⁵ are edited off of the videotapes by saving the applicable tape segments on other videotapes, which are then kept by the Casino Royale; and that not only was it a "high priority" to record any and all alleged misconduct by the pickets but also, if incidents occurred, security guards were instructed to immediately check to see if such were recorded by the surveillance cameras.

The record discloses that Respondent commenced picketing on the public sidewalk in front of the Casino Royale on December 31, 1991, the day before the latter opened its doors to the public; that the picketing continued, on a daily basis, at least through the start of the instant hearing; that picketing each day begins at approximately 7 a.m. and continues until 11 p.m. or midnight; and that the picketing is informational picketing directed at the public.⁶ The parties stipulated that the individuals, who picket on behalf of Respondent in front of the Casino Royale, are paid \$200 per week for a full week of picketing,⁷ and the record evidence is that the picketing is done in 8-hour shifts. The record further discloses that, at any time between the above hours, Respondent has between 6 and 10 pickets, most of whom carry signs stating that the Charging Party does not have a contract with the Union, stationed in front of the Casino Royale; that, during the period of the construction work in 1994, Respondent's pickets would either move from entrance to entrance or stand in the middle of the sidewalk in front of the two entranceways; and that, subsequent to the conclusion of the construction work, Respondent's pickets continued to move from entrance to entrance and, when stationary, to stand in front of the sidewalk entrances on the back part of the side-

walk next to the planters.⁸ Further, picket captains,⁹ whose duties included maintaining the picket line, issuing instructions as to the "verbiage" being used, and communicating with officials at the Union's office whenever necessary, are present during each shift, and union officials, including Philip Joe Daugherty and Kevin Kline, a union representative, regularly work picketing shifts and are responsible for what occurs while present. Also, there is no dispute that Respondent's pickets utilized an amplification device, an battery-powered electric bullhorn, to aid in publicizing their message to sidewalk pedestrians. The way the pickets used this device is at issue here. According to Daugherty, he gave explicit instructions as to what should be said over the bullhorn and to whom—"that the message be generic for the public and the pedestrians." He added that he continually instructed the pickets "that they need to . . . use common sense and to be aware of what was going on around them and to be considerate of the public . . . and not to use the bullhorn in any offensive manner."¹⁰ Finally, with regard to the pickets, the Casino Royale employs "greeters," who normally stand in the sidewalk entranceways and attempt to entice pedestrians to patronize the casino, who, according to greeter, Amber Gilbert, come into "contact" with Respondent's pickets on a daily basis, and who, as Daugherty conceded, always have a full view of the pickets.

The alleged unlawful acts and conduct, which was committed by Respondent's pickets and which is described below, occurred during and subsequent to the casino remodeling construction work in 1994.

2. Videotaping and threats of bodily harm

Denise Gulliver, whose husband is a supervisor in the Casino Royale's deli, testified that she went to the casino two or three times a week in order to meet her husband. The witness, whose habit was to enter through a front entrance if late in the evening, further testified that one instance of such was on the night of April 17; that, between 10 and 11 p.m., while carrying her 4-month old infant, as she approached within 10 feet of the south entrance, she observed three pickets (a large black male and two white females) standing in front of it; that the man was shouting through an electric bullhorn at the free slot machine attendant, who was working

³ Sandquist cautioned that "if the camera is not pointed in [the direction of an incident], there would be nothing there."

⁴ Such cameras can be manipulated by an operator but, if not moved, they remain in the last, set position.

⁵ According to Sandquist, what is saved is anything seen by an operator which he deems "worth saving" and incidents, which are the subject of the instant complaints.

⁶ In this regard, the record evidence is that the Charging Party's casino and restaurant employees are not represented by any labor organization; that Respondent has neither demanded recognition from the Charging Party as the bargaining representative for the employees nor has engaged in any organizing activities at the Charging Party's facility; and that Respondent has never requested that any of the Charging Party's employees act in concert with it.

⁷ A full week of picketing is defined as 15 or more hours of picketing. For less than 15 hours of picketing, individuals are paid \$100 per week.

⁸ Apparently, during the period of the construction work on the casino, Respondent was not the only picketing labor organization in front of the Casino Royale. According to Philip Joe Daugherty, a union organizer for Respondent, the Carpenters Union also engaged in picketing, with signs protesting that the Charging Party was employing nonunion contractors to perform the construction work. Daugherty added that the Carpenters Union picket signs clearly identified that labor organization. Daugherty further testified that the Carpenters Union picketing was conducted during the daytime and early evenings; that no more than 10 pickets would be present; and that their picketing "was at the doors where the construction walls were, so it would be in the same location where we had picketing activity."

⁹ Three identified picket captains were Gloria Hernandez, in charge of the early shift; Myrna Cristo, in charge of the late shift; and Terry Lemley, in charge of the latter part of the late shift.

¹⁰ Picket captain Lemley added that pickets at the Casino Royale were instructed "to say there's no union contract, and not to say anything . . . bad to customers, like call them scabs or something like that, and no profanity."

inside the casino;¹¹ and that she stopped "just a few feet" from the male picket and listened to him shouting through the bullhorn. Gulliver added that he noticed her presence, "and he looked at me and he said something. And I just said, '[G]et a job and started walking [toward the casino entrance].'" The male picket responded by shouting "blah, blah, blah" at her through the bullhorn, and one of the female pickets urged him to "kick this white bitch's ass." The male picket continued to shout through the bullhorn at Gulliver until she entered the casino. Gulliver further testified that the entire incident lasted no longer than 3 minutes and that it occurred directly in front of the south entrance. Finally, there is no evidence that the free slot machine attendant or any other casino employees observed what occurred or overheard what was said in Gulliver's presence by the female picket.

Albert Glen Vaught, who worked for the Casino Royale as a security guard, testified that, at approximately 11 o'clock in the evening on June 10, while standing at the west end of the "pit," which was located between the two entrance doorways, he heard a female picket, named "Terry," shout into the casino through an electric bullhorn "we know who you are and we know where you live." Vaught further testified that he had heard and observed Terry using the bullhorn earlier that evening and on other occasions and that she normally confined her conduct to shouting at people inside the casino, calling them "losers" and "boozers." Vaught added that he could not recall what else the picket may have said and that "I don't know who she was addressing. I didn't see her pointing at any individual." During her testimony, while denying that such had anything to do with the picketing or any labor dispute, Respondent's picket captain, Terry Lemley, conceded having shouted at a Casino Royale employee, named Cindy, in front of the hotel during the evening of June 10, "we're going to get you, we know where you live." Lemley averred that she was provoked inasmuch as "Cindy" had been poking "fun" at her—"She was making remarks about [my] weight. . . and she was making fun of my singing and . . . flipping me off. It made me angry and that's how I wanted to get back at her."

Amber Gilbert, who worked as a greeter for the Casino Royale from March 14 until June 12, testified that, at approximately 9 p.m. on June 11, she was "outside the south entrance doors" training a women in the duties of a greeter. Stating that the sidewalk was encased in a wood covering to protect pedestrians during the casino remodeling work, Gilbert further testified that, no more than 5 minutes after she stepped outside the casino doors, "there were these two Hispanic women that were pointing and screaming while I was trying to get people in there." The two women "were carrying signs. One had a bullhorn." Gilbert added that she tried to ignore them, but, at one point, "they were pointing and they said they were going to get me."¹² Later that evening, according to Gilbert, she observed a Spanish-speaking Casino Royale employee having a conversation with the two pickets; he reentered the casino, approached Gilbert, and told her that

her "ass was theirs."¹³ Elma Beltran, who was a striking Frontier Hotel employee and who picketed at the Casino Royale on behalf of Respondent 5 days a week, testified with regard to a verbal confrontation that evening between another picket, Anna Cuevas, and a female Casino Royale employee, presumably Gilbert. According to Beltran, the casino employee was continually taunting and making faces at Cuevas, calling her "a Mexican" and "that she was skinny and that she doesn't know how to speak English." To these, Cuevas finally responded, warning Gilbert to "keep still otherwise she was going to hit her."

Harvey McCoy, who worked for the Casino Royale from July 2 until September 21 as a casino shift manager,¹⁴ testified that, between 11:30 and midnight on the night of July 22, he "was in the pit by the roulette table, which is about 30 feet from the front door," when he became aware of a disturbance outside that doorway. According to McCoy, he walked toward the doorway and observed two "Afro-American" male pickets having a "verbal confrontation" with Casino Royale security officers, who were inside the casino. One of the pickets had a bullhorn, and McCoy heard him shouting through it "if you don't like what I'm saying, you can come out and get with me or get some of this." Then, noticing McCoy in the doorway, the picket, who was shouting through the bullhorn, yelled at him "you must be the new head-nigger in charge." McCoy replied that the picket was being "out of line." To this, the picket responded, calling McCoy "an Uncle Tom" and inviting him to "come out and get with me if you don't like it." There is no evidence that any Casino Royale employees, other than security personnel, were in a position to hear what the picket said to the guards or to McCoy or became aware of what was said.

Mark Wilcox, who worked as a security guard for the Casino Royale from July through November, testified that, on August 13 some time between 6:30 and 7 p.m., while in the "21 pit area," he observed Robert Shafer, the head of security, standing outside a casino doorway. According to Wilcox, "I went out to talk to him. And as I went out the doors, there was a [picket] with a bullhorn, stated that he knew who I was . . . and that he was going to get me." Wilcox added that the picket was shouting through the bullhorn as he went outside and that he does not know what provoked the picket to threaten him. Shafer corroborated Wilcox, testifying that he was standing outside the new south entrance to the casino and observing the picketing; that an Hispanic male was "badgering" him with the electric bullhorn that his security guards were attempting to pick fights with the pickets; that Wilcox approached and stood beside him; and that the picket saw Wilcox and shouted "[W]e . . . know who you are, we will get you." There is no evidence that any Casino Royale employees, other than security per-

¹¹ Apparently, just inside this entrance, the Casino Royale placed a large slot machine, and patrons were invited to line up and have a free pull on the lever for a chance to win a prize.

¹² Gilbert said that the alleged threat was uttered in English.

¹³ During cross-examination, Gilbert said that the threats that evening were not the first directed toward her by pickets—"Oh, they would do it before, I would blow it off. I would smile and try not to let it bother me." She added that she does not understand Spanish and that, on June 11, the pickets spoke in Spanish until one said, "I'm going to get you" in English. Finally, Gilbert denied taunting, gesturing, or saying anything back to the two women—"I always smiled at them" and never said anything to them as "I would be screaming to get people in that place not screaming at them people."

¹⁴ In the position, he was responsible for overseeing the operations of the entire casino during his shift.

sonnel, overheard the picket's comments to Wilcox or became aware of them.

Edith Everett, who is a greeter for the Casino Royale and who described her job function as attempting to "lure" passing pedestrians into the casino, testified that, in the evening of September 17, she was stationed "between the pillars" at the main entrance to the casino; that two male pickets and one female picket were standing just a few feet from her. She added that one of the male pickets, who was either a "tall black guy" or a "short Mexican guy," photographed her with a video camera; that each of the pickets was "harassing" her because she is Jewish; and that the videotaping and anti-Semitic harassment continued for, at least 5 minutes. Joe Daugherty admitted that Respondent's pickets have used a video camera in front of the Casino Royale "if they thought that there was a problem with the potential for confrontation. At times what would happen is that a person would be patronizing the Casino Royale" and "would stand at the doors and . . . say things back to different [pickets]." He denied that videotaping was ever done so as to intimidate anyone. Also, with regard to the videotaping of Everett, Picket Captain Terry Lemley conceded that she has witnessed other pickets videotaping Everett at work but explained that such was done only when she was seen speaking to individuals, who, the pickets suspected, were distributing pornographic literature on Las Vegas Boulevard, and as the individuals are quite noisy and "they start coming up to us, telling us to shut up . . . or saying rude things." Notwithstanding her explanation for aiming a video camera at Everett, Lemley also conceded that, on occasion when pickets pointed the video camera at Everett, there was no videotape in it.

Kenneth Cheatham, who has been a security officer at the Casino Royale since 1992 and who apparently was assigned, on a daily basis, to stand outside on the sidewalk and videotape the picketing, testified that, at approximately 1:30 p.m. on September 24, "I had noticed some Union officials on the picket line," and "I went out with security camcorder to record their activities." Once outside, Cheatham stood facing the doors of the casino from behind a planter, "and I was videotaping [Kevin Kline] because he was standing right outside . . . the south front door and using the bullhorn yelling directly into the casino every time . . . a customer would go in." According to Cheatham, after a few minutes, a customer came out of the south doors and engaged in a "verbal confrontation" with Kline, who was standing no more than 2 feet from the doors, over the latter's use of the bullhorn, and "so this customer comes directly out the door and walks directly into Mr. Kline since he was so close to the door and they were having words. . . . And the customer started walking north along the sidewalk and Mr. Kline was following after him, saying something to him." Cheatham, who had his camcorder "going continuously," attempted to get closer to Kline and the customer; however, a large Hispanic male picket "got in front of me, directly with his sign and swung it at the camera," saying, "[I]f you want some sign, I can give it to you." Cheatham further testified that, as the video camera rested on his right shoulder, he believed that the picket sign was aimed at him and the camera. Finally, with regard to this incident, during cross-examination, Cheatham conceded that he was not struck by the picket sign, and there is no record evidence that any employee of the Casino

Royale, other than security personnel, witnessed what occurred or became aware of the incident.

Edith Everett testified that, at approximately 6:30 p.m. on October 25, she was standing outside the pillared entrance to the casino and speaking to a white male customer, named "Curtis," about whom there were rumors that he distributed circulars on the street. According to Everett, "[W]e kept on getting interrupted by . . . one [female picket] by the name of Heidi," whom she also heard referred to as "Terry," and the picket started calling Curtis "names" and asking him not to cross the picket line and go inside the casino. "And then she started saying, you'd better call the ambulance. I'm going to put you in the hospital." Respondent's picket captain, Terry Lemley, did not dispute that such an incident did occur in the evening of October 24 but presented a different version. According to her, that evening, while picketing in front of the pillared entrance to the casino with the electric bullhorn, she observed Everett inside, standing next to the free slot machine and speaking to one of the aforementioned suspected pornographic literature distributors, who, she described as a "white guy with long hair" and who had "been drinking," and the man was "making comments toward me" such as telling her to shut up, threatening he was going to "shove the bullhorn down my throat and hit her in the mouth with it, and asking if she ever got 'bored' with picketing." Lemley further testified that, in response to these comments, she did say that she had been in jail five times during that week, that he would go to jail, "that he was fucking with the wrong person," and that, at one point in their exchange, after the man grabbed his crotch and gestured to her, she replied, "You'd better keep that little thing." Lemley added that her verbal exchange with the white pornographic dealer continued and eventually lead to the latter coming outside, and he "pushed me and hit me with my bullhorn . . . and then he went back into the casino where the security guards took him."

Respondent presented two pickets, who assertedly witnessed the confrontation between Lemley and the Casino Royale customer on October 24. Rocio Martinez testified that, during the evening, Lemley had been speaking through the bullhorn to passing pedestrians, that, while standing next to Lemley, she observed Everett "standing . . . by the slot machine with a man. It was one of the men that hands out magazines," a white male who looks like a "hippy-type person," and that she heard the man begin making comments about Lemley's use of the bullhorn and "trying to start something with her." With regard to what was said, Martinez was able to "just remember them arguing;" she could not recall the man eventually coming outside and attacking Lemley and averred she would have remembered such an incident. The other witness, Nellie Krasney, who also testified that she was present during the confrontation between Lemley and the customer, stated that she was on the picket line prior to Lemley's arrival that night; that she observed a drunk male, who was tall, thin, and unshaven inside the casino; and that the man noticed her picketing and yelled out to her, "[W]hy don't you get a job, lady bitch?" Continuing, Krasney testified that Lemley eventually arrived and began picketing with the electric bullhorn outside the main casino entrance and that the same man said some things to her—"that he was going to grab her and that . . . he was going to go after her; that he was going to take the [bullhorn] from

her and hit her over the head with it." Krasney further testified that, despite his words, the customer never carried out his threat to go after Lemley. Finally, perhaps the best evidence of what occurred is the Charging Party's Exhibit 3. The exhibit is a videotape, which, among other incidents, contains a sound recording of the above-described October 24 confrontation, which seems to have been recorded by a camera located south of the main, pillared entrance of the Casino Royale. The videotape reveals that Lemley, Krasney, and Martinez were picketing on the sidewalk in front of that entrance at approximately 10:18 p.m. on October 24, with Lemley standing midway between the planter and the entrance and shouting through the bullhorn at pedestrians to "pass on by"; that, from inside the casino, a male-sounding voice yells, "Don't you ever get bored"; that Lemley replies she had been sent to jail five times that week and "Want to go with me this time, scumbag," that, although, for the most part, inaudible, the verbal confrontation was an ongoing one; that, moments later and facing into the entrance, Lemley yelled, through the bullhorn, "You're going to the hospital"; and that, subsequently and obviously in response to something said by the person inside the casino, Lemley shouts through the bullhorn, "You don't ever underestimate me" and "You're f—king with the wrong person." The videotape does not reveal any physical confrontation between Lemley and anyone else.

3. The bullhorn assaults

The record is replete with allegations of "assaults" by Respondent's pickets, assertedly utilizing their bullhorns in a manner designed to cause injury to the hearing of or, at least, great discomfort to passing pedestrians and potential customers. Thus, the greeter, Edith Everett, testified with regard to the use of a bullhorn against her by pickets; however, the record is unclear as to exactly when said incident occurred. Thus, having been led to October 29 by counsel for the General Counsel, Everett averred that the date was "not registering" with her. Then, upon being shown her pretrial affidavit in order to refresh her recollection as to the date, Everett never directly answered as to whether she could recall that the alleged incident occurred on the date suggested by counsel for the General Counsel. With regard to the incident itself, according to Everett, late in the afternoon while she was acting as a greeter in front of the casino, a Hispanic picket just walked over to her and, placing his bullhorn right next to her ear, screamed into it that there was no union at the Casino Royale.¹⁵

Benjamin Jeffries, a Las Vegas resident, testified that, in the afternoon of March 26, he was walking south to north along Las Vegas Boulevard and passed in front of the Casino Royale inside the covered sidewalk; that sidewalk traffic was heavy at that time of the afternoon; that he had encountered the pickets outside the Casino Royale on other occasions; that, on this occasion as he passed the casino entrances, he

noticed a "tall, blond lady," who was carrying a bullhorn, walking toward him; and that, as she was about to pass Jeffries, "she [raised] the bullhorn and put it in my face and said, don't go in, and said obscenities that you shouldn't go in, that you'll lose all your money." Jeffries added that the picket jammed the bullhorn within "maybe two inches" of the right side of his face before shouting into it; that the yelling into his ear caused him to stop walking; that the picket immediately moved away from him and he turned and observed that the picket "was doing the same to everyone that was going behind me"; that he did nothing to provoke the picket's conduct; and that he suffered a "ringing" in his ear for, at least, a day after the incident. Finally, there is no evidence that any Casino Royale employee observed what occurred or that employees, other than security personnel, became aware of this incident.

Sisters Shereen Craythorne and Barbara Phelps, residents of Salt Lake City, Utah, testified regarding an April 7 confrontation. The former testified that, at approximately 4:15 p.m. in the afternoon, she was walking north to south along Las Vegas Boulevard with her husband, infant son, sister, and other family members; that pedestrian traffic was heavy at the time; and that, as they approached the Casino Royale, they could see pickets, including a tall, "very muscular" black man, who was standing to the side of an entrance and carrying and talking into an electric bullhorn. Craythorne testified further that the sidewalk in front of the Casino Royale was covered; that, as they approached within 6 feet of the black picket, "because [the bullhorn noise] was starting to echo . . . and hurt our ears," her husband asked the picket not to speak through the bullhorn until they passed by so that the noise would not wake and possibly harm their baby; and that the picket "became very belligerent" and, through the bullhorn, said "he would do what the f—k he wanted . . . we didn't know what he was doing out there. He had the right to do what he was doing." To this, according to Craythorne, she replied that the way he was picketing "was, I felt, wrong," and, suddenly, the picket "came at us . . . yelling in the bullhorn towards us within two to three feet away" and "saying again that he had the right to 'f—king do' what he wanted. Corroborating her sister, Phelps testified that the family group entered the covered sidewalk in front of the Casino Royale and first heard bullhorn noise coming from 15 feet in front of them and that, just as they reached the first entrance, a picket, who was carrying a bullhorn, approached within "one to two feet" of them and said they shouldn't gamble in that casino, using much vulgar language in his message. According to Phelps, "Well, my brother-in-law . . . asked him to please hold it down because the baby was asleep." Suddenly, the picket became "very upset" and said, "[H]e didn't care about the f—king baby." To this, her sister said that she was also a union member and would not speak that way. The picket responded, saying if she really worked for a union company, she would react the exact same way. At some point, the sisters testified, the picket called Craythorne a "bitch."¹⁶ Finally, there is no record evidence that any Casino Royale employee witnessed the incident or

¹⁵ Everett added that pickets have used their electric bullhorn "as a weapon" against her "at least two or three times a week," totaling as many as "40" such attacks, since October. However, as these incidents are not alleged in any of the instant complaints and as counsel for the General Counsel did not seek to amend the documents, I decline to make findings or conclusions with regard to them or draw inferences regarding earlier incidents.

¹⁶ Craythorne and Phelps each testified that she has suffered from, and continues to suffer from, a ringing sensation in her ears as a result of the incident.

that employees, other than security personnel, ever became aware of it.

Security officer Cheatham testified that, on April 17, between 9 and 10 p.m., while performing his assigned duties, "videotaping culinary bullhorn activity outside the south door to the old casino," he observed a large black picket, euphemistically known to the security guards as "bugle-boy" based on a sweatshirt he habitually wore while picketing, utilizing an electric bullhorn and standing "in close proximity" to the doorway—within 6 feet of the free-pull slot machine. Cheatham was videotaping the picket's use of the bullhorn and the reactions of pedestrians to the noise, and "every time I would pan away from him to pick up the reaction [of] the pedestrians, he would walk directly up to me, place the bullhorn probably within six inches of my ear and scream as loud as he could." Cheatham denied that he did anything to provoke the picket and added that he tried to ignore what the picket did and to continue to videotape the picket's activities and that the noise caused him to suffer a headache. There is no evidence that any other Casino Royale employees witnessed what occurred or became aware of the incident.

Chief of Security Shafer testified that, at 6:50 p.m. on April 30, he was standing in the covered sidewalk outside the south door of the casino and "videotaping some of the bullhorn activity on the picket line . . . and watching what was going on." According to Shafer, Joe Daugherty was picketing with a bullhorn at the time, standing by the corner of the entranceway to the south doors, facing into the casino, and speaking through the bullhorn in that direction. The witness further testified that he observed a group of 8 to 10 pedestrians walking south to north and coming from behind Daugherty and that, as they passed by within 3 or 5 feet of him, he "just raised the bullhorn and started to scream into it." Asked if he believed that Daugherty acted deliberately, Shafer stated, "He had been shouting and he quit for a little bit and when they walked by, he raised [the bullhorn] up and shout[ed] again" and that "I don't know if it was deliberately aimed at [those people passing by him] or not, but that group . . . right there was who he seemed to [be] . . . screaming at."¹⁷ Shafer did not recall what Daugherty shouted at the pedestrians and did not hear any of the pedestrians speak to him. Daugherty conceded using the electric bullhorn on occasion but denied using it in such a manner as to attack any pedestrian's ears. He added that, when using the bullhorn, "I typically pace back and forth." Finally, there is no evidence that any Casino Royale employees witnessed what occurred or that employees, other than security personnel, ever became aware of the incident.

Thomas Paddock, a resident of Las Vegas, who had been inside the Casino Royale "maybe three times" and was aware of the picketing in front of the casino and of the pickets use of a bullhorn, testified that, in the evening on August 23, he was walking from north to south on the sidewalk along Las Vegas Boulevard and that, as he approached the

Casino Royale, he did not hear anyone shouting through a bullhorn. According to Paddock, he reached the hotel, noticed that all the pickets, including a man carrying a bullhorn, were standing together and stopped to look at the facade over the new main entrance. Paddock testified further, "I was standing back looking at the facade . . . and somebody . . . stuck a bullhorn right to my ear and hollered real loudly . . . bad luck if you go into the casino. And the bullhorn was close enough that when he did it, I reared back and it actually hit me in the right ear." When the picket withdrew the bullhorn, Paddock turned in order "to confront him," but "there were three of them, there was one of me." Paddock added that he neither made eye contact with the picket carrying the bullhorn, nor spoke to him prior to the incident, that he never provoked the picket in any way, and that he suffered from a headache and a ringing in his ears as a result of the incident. Finally, with regard to what occurred, there is no evidence that any employee of the Casino Royale witnessed the incident or that employees, other than security officers, ever became aware of what occurred.

Thomas Wanko, a resident of St. Louis, Missouri, testified that, at approximately 1:50 p.m. in the afternoon of September 17, he was standing at the end of a line of people on the sidewalk at the main entrance to the Casino Royale and waiting to "pull the free slot machine" and that, at the time, there were four or five people in front of him and he was standing about 15 feet from the slot machine and 4 feet from the curb. As Wanko stood there, a man approached from behind him, stopped just behind his left shoulder, and, utilizing a bullhorn no more than 6 inches from Wanko's ear, shouted that the witness should not go into the casino to gamble and, then, called him a "f—king fat ass." Wanko, who denied doing anything to provoke the incident, further testified that he saw the bullhorn in his peripheral vision, turned toward the sound, and, for the first time, actually saw the man, who was carrying the bullhorn and, also, a picket sign, and that, almost instantaneously, a Casino Royale security officer walked out of the casino and the picket, whose name, Wanko later learned, is Kline, walked away. According to Wanko, as a result of the incident, he experienced "great discomfort" in his ear. Kevin Kline testified on behalf of Respondent and denied ever using the electric bullhorn to hurt anyone by aiming it directly into a person's face or to insult anyone. Finally, with regard to this incident, there is no evidence that any employee of Casino Royale witnessed what occurred or that any employees, other than security officers, became aware of what occurred.

Helen Burford-Taber, a resident of Las Vegas, testified that she had walked past the Casino Royale many times and was aware of the picketing in front of it; that she had never been inside the casino; and that, on October 9, "I had been out for an evening walk and I had walked northerly to the Desert Inn and was at my turn-around point heading back towards where my car was parked at the Maxim Hotel." At approximately 11:05 p.m., as she approached the Casino Royale, she heard "a very high pitched siren and I heard this two or three times. And as I got closer . . . I again heard the siren."¹⁸ Burford-Taber reached the sidewalk in front of the Casino Royale, and, as she passed by the casino's north

¹⁷ Shafer conceded that the incident should have been recorded by one of the surveillance cameras over the entranceway and that he did not make an immediate effort to check the surveillance tapes. He also testified that he has seen videotape of pickets shouting into bullhorns within 4 or 5 feet of passing pedestrians, causing the people to cover their ears, and that he considers such conduct to constitute deliberate assaults.

¹⁸ At this point, Burford-Taber did not know the location of the siren sound.

doors and walked in front of a large female picket, who was carrying a placard, the woman "had a bullhorn and she [lifted it] and she blasted it. And she was probably no more than 10 inches from the side of my head and this is what the siren sound was." Denying that she did anything to provoke the picket and terming the picket's conduct "deliberate," Burford-Taber added that the former "was facing me. She knew exactly what she was doing . . . As I was parallel to her, she just let it go."¹⁹ With regard to the pickets' use of the electric bullhorn's siren mechanism, Joe Daugherty conceded that pickets have used the siren function on the bullhorn but on "very rare occasions" and only "new" pickets, who were "just checking out" how the bullhorn worked, did so. Daugherty added that, late in the summer of 1994, "I told people we should not use that mechanism" because a police officer "told me that he did not want [the bullhorn] to be used in that manner." Nevertheless, he conceded that Terry Lemley and Rocio Martinez received citations from the police for use of the siren in October.²⁰ Finally, there is no evidence that any Casino Royale employee witnessed the incident or that any employees, other than security personnel, ever became aware of it.

Frederick Whitehead, a resident of Bullhead City, Arizona, who had previously patronized the Casino Royale and was aware of Respondent's picketing but not of the bullhorn, testified that, at approximately 6 o'clock in the evening on October 29, along with two other men, he was walking north to south on the sidewalk along Las Vegas Boulevard and was about to enter the Casino Royale and that he observed pickets walking back and forth in front of the facility and another picket, who was carrying a bullhorn, walking "back and forth" in the middle of the sidewalk in front of the double entrance doors. According to Whitehead, as he maneuvered past the latter picket in order to enter the casino, the individual, who was "right beside me" and no more than "a couple of feet" away, shouted into Whitehead's left ear through the bullhorn. Whitehead added that he was unable to recall the words used by the picket; that the sound of the bullhorn caused a severe "ringing" in his head; and that he did nothing to provoke such conduct. He further testified that the picket, who used the bullhorn was a male; however, after being confronted by his pretrial affidavit in which he identified the picket as a female and asked whether the picket was a man or a woman, Whitehead averred, "I don't recall. It looked like—it looked like a—I don't know, one of them things. I've seen them things that look like guys that were girls, and girls that were guys, so . . ." In any event, there is no evidence that any employees of the Casino Royale witnessed this incident or that employees, other than security personnel, became aware of it.

Security officer Cheatham testified that Respondent's pickets would customarily have boom-boxes set up on the sidewalk outside of the casino and would play taped messages

over them. According to him, one day in October, he was assigned to videotape the picketing and to record as many of the boom-box messages as he could. At approximately 5 p.m., "I went out to the area of the boom-box and stooped down in order for the microphone of the camcorder to be as close to the boom-box as possible." At that point, all of the pickets came over to him "crowded around me and put their signs down in order to block the view of the camcorder, then, one of the [pickets] came up with the bullhorn that has the siren function on it, held it right up against the camera and gave out three blasts of the siren." Cheatham specifically denied provoking the pickets ("I never have any interaction with the [pickets]. I never speak to them. I just shoot what management requests me to shoot.") and further testified that the bullhorn had been placed no more than 6 inches from his right ear and that, as a result of the use of the bullhorn against him, he suffers from "diminished capacity" in his hearing. Finally, there is no record evidence that any other Casino Royale employee witnessed the incident or ever became aware of it.

None of the witnesses, presented by Respondent, specifically denied any of the above-described incidents; however, witnesses did generally deny the ascribed conduct. Thus, Terry Lemley denied ever pointing the bullhorn at any pedestrian and stated that her practice was to point the bullhorn toward the ground when shouting into it while people were passing. Union officials Daugherty and Kline each stated that he used the electric bullhorn while picketing but denied using it to attack anyone's ears or placing the bell of the bullhorn into someone's face. Further, picket captain, Gloria Hernandez, and picket, Myrna Preciedo, each denied ever seeing any picket use the electric bullhorn to yell directly into an individual's face or ever doing so herself.

4. Physical assaults

There is record evidence of two allegedly unlawful physical attacks by Respondent's pickets—one upon a customer and one upon an employee. With regard to the former, there is no dispute that, on May 1, picket captain, Terry Lemley engaged in a physical confrontation with a Casino Royale customer, Peter Kuhn. According to Kuhn, who had patronized the Casino Royale on an earlier occasion and was aware of the picketing, late that evening, he and his wife were walking north to south on the sidewalk along Las Vegas Boulevard and decided to go into the Casino Royale for drinks and shrimp cocktails. Kuhn testified that, as they approached the casino inside the covered sidewalk, "There was a . . . woman standing out there, using a . . . bullhorn, directing . . . comments into the entryway to the Casino Royale. As we turned to go in, she directed some nasty comments at us . . . something like, don't go in there . . . and it was quite loud."²¹ Thereupon, Kuhn turned to the picket and asked why she "has to be so obnoxious," and the female picket approached within 2 or 3 feet of Kuhn "and made some more comments with the [bullhorn]." At this point, Kuhn continued, "I . . . pushed at the bullhorn . . . with my hand because it was very loud into my ear, and I pushed it away. She took the [bullhorn] into the air like she was going to hit me. I grabbed it. At which time she kicked

¹⁹ Stating that the individuals, who were in front of the Casino Royale had a "right" to picket, based on what occurred, Burford-Taber believes the pickets to be "rabble-rousers." She added that the siren sounding caused "tremendous pain in my ear."

²⁰ Martinez was cited for using the bullhorn siren on October 10, and she conceded that, "I could have used it the night before I got cited." She added that she almost always held the bullhorn in a downward direction when sounding the siren and never toward pedestrians, who were walking by her.

²¹ Kuhn and his wife were directly in front of and within feet of the doors.

me . . . by the left knee." Then, Kuhn and the female picket began shouting at each other, and someone from the casino came outside and ushered him inside and apologized for what had occurred. During cross-examination, Kuhn conceded that, when he pushed the bullhorn away from him, "it may well have" struck the picket in her face and that, after the picket kicked him in his left knee, he threatened to "slug" her if she did anything else. Wendy Wood, a change girl, who witnessed the confrontation between Kuhn and Lemley, corroborated the former that Lemley was yelling through the bullhorn just behind Kuhn's head; that Kuhn pushed the bullhorn away; and that Lemley retaliated by kicking him "in the shins."²² Lemley's version of the confrontation was that she was standing in front of an entrance to the casino and yelling through the bullhorn that "there's no union contract at Casino Royale. . . . And then this gentleman came up to me and pushed my bullhorn," causing it to strike her in the mouth. According to Lemley, his act was entirely unprovoked by anything she did, and, as a result, "I kicked him." Respondent's picket captain specifically denied aiming the bullhorn at the man's face or raising it above her head as if to hit him; however, "I probably turned it around so I wouldn't get hit again in the mouth."

There is no dispute that Amber Gilbert, whose testimony, regarding a verbal confrontation during the evening of June 11 with a picket, I have recounted above, was physically assaulted a short distance from the Casino Royale after she left work the next night, June 12. Thus, Gilbert testified that, after reporting for work that night, based on the picket's threats against her the night before, she refused to work as a greeter and that, as a result, she was assigned to "change" duties inside the casino. However, according to Gilbert, she was close enough to the casino entrance that pickets were able to see her and she could hear them, and she observed the same two female Hispanic pickets, who had threatened her the previous evening, pointing at her and saying they were going "to get" her.²³ Gilbert further testified that, at the end of her shift at approximately 10:45 p.m., she left the casino through the south entrance doors; that, as she walked outside, the two Hispanic pickets were near the entrance; that she walked between the pickets and "made no eye contact with them, looked straight ahead"; that she turned left on the sidewalk and walked approximately 18 feet to a driveway located between the Casino Royale and Harrah's; and that she turned into the driveway and began walking to where her car was parked. Thereupon, "I was walking, looking down. I heard something in Spanish. I turned around, I was punched from one person and then I went to the ground and I was tackled again, kicked. Punched in the left jaw and the right eye. Up against the fence, they cut my head." Upon being attacked, Gilbert began "screaming and yelling." Then, according to Gilbert, another picket, Terry Lemley, the individual who normally carried the bullhorn, appeared and told the

two attackers "to get the fuck out of there." Gilbert added that her attackers "were the same two girls that were carrying the signs the night before and that same night"; that they kicked her in her "butt" and "my back"; and that, during the attack, she heard one girl say something like, "You want to talk shit." Her attackers hurried away, and, bleeding from the left side of her face and with bruises and cuts on her face and back, Gilbert returned to the casino and received medical assistance.²⁴ While corroborating that Gilbert was injured as a result of being attacked, Frances Rae Jean Wilson, who works for the Casino Royale as a slot machine attendant, contradicted Gilbert as to her precise injuries, stating, "She had a laceration to the right eye with bleeding and severe swelling" and "Her face was the only area that she stated she hurt. She didn't seem to have any other problem."

Respondent concedes that an Hispanic female picket, Anna Cuevas, was responsible for the attack on Gilbert but denies that anyone else was involved. In this regard, Alba Tobar, who pickets on behalf of Respondent every week at the Casino Royale from Thursday through Sunday, testified that, on the night of June 12, she and Cuevas were picketing at a casino entrance; that she stood to the left of the entrance and Cuevas stood on the right side of the entrance; and that a blonde-haired female employee, who "had been laughing at [Anna]" throughout the evening and whom Cuevas threatened "that she was going to wait for" exited from the casino, acting "as if she hadn't seen us," and walked "past in between us, laughing at us and insult[ing] Anna Cuevas," calling her "f—king Mexican" . . . under her breath, low." Almost immediately, according to Tobar, Cuevas walked over to her, "gave me her chain and her cigarettes and she ran after [the blonde employee]." Thereafter, picket captain Terry Lemley asked Tobar, "What is happening between [the female employee and Cuevas]," and Tobar replied, "That they were going to have a fight." Lemley then ran after Cuevas, and Tobar dropped her picket sign and followed in order "to see what was happening." Continuing, Tobar testified that the first person, whom she encountered, was the female employee, who was "walking back towards the casino" and "crying." Thereafter, she found Lemley and Cuevas, both of whom were looking for a chain, which belonged to Cuevas, and Lemley instructed them to go home "because the fight was already over" and "it happened five minutes before we were finished and that's why we went [home]." Tobar specifically denied participating in the attack upon the employee. Terry Lemley testified that Cuevas and Tobar were picketing in front of the entrance nearest to Harrah's; that, at the time, she did not know Cuevas' name and had never spoken to her; and that, while she had not seen Gilbert leave the casino, she did notice Cuevas giving her picket sign to Tobar and walking off down the sidewalk. According to Lemley, as what Cuevas did was "very rare," she walked over to Tobar "and asked her what's going on. And then that's when [Alba] told me that [Anna] was going to go after [the employee] . . . that [Anna] was going to get her." Lemley assertedly replied, "[W]e can't have that" and

²² Likewise, Amber Gilbert, who apparently witnessed the incident, testified that she observed Lemley "blowing this horn at this guy's ear. He turned around and said something and she kicked him."

²³ Alba Tobar, testifying on behalf of Respondent, stated that she was picketing outside of the Casino Royale on the evening of June 12 along with Anna Cuevas and Terry Lemley; further testified that, throughout the evening, the female employee, who was assaulted, "had been laughing at [Anna]" and that Anna responded, "that she was going to wait for her."

²⁴ During cross-examination, Gilbert denied calling one of the Hispanic women "a f—king Mexican" prior to the attack. She added that she thought she was hit five or six times and, while not attempting to fight back, "I like tried to push them away." Finally, she denied giving the pickets any reason to attack her—"no" reason.

went after Cuevas.²⁵ Continuing, Lemley stated that she hurried off in the direction taken by Cuevas and encountered her holding the leg of a woman, who was laying on the ground and that, when Cuevas saw her, she released the fallen woman's leg.²⁶ At that point, Tobar approached and, inasmuch as "their shift was over" and "it was time for them to go," Lemley "told them to leave." Lemley added that, when the police arrived to investigate, she told a police officer that she did not know the names of the two Hispanic pickets. On this latter point, Lemley later testified, during cross-examination, that she told the police that the two Hispanic women were Respondent's pickets but that she did not know their names.

Charging Party's Exhibit 3, the above-described videotape, contains a surveillance camera recording of the scene in front of the casino entrance before and after Gilbert's departure from the Casino Royale late in the evening on June 12, a recording of her return to the casino, and a recording of Lemley's subsequent interrogation by a police officer. Analysis of the videotape establishes that, prior to Gilbert's departure, Cuevas is seen standing with a picket sign to the right of the entranceway, and Tobar is standing with a picket sign to the left of the entranceway and that, at 10:55.27 p.m., Gilbert walks between them and turns left on the sidewalk. While, it is impossible to determine whether Gilbert uttered something under her breath as she passed by the two pickets, and notwithstanding that she never turned her head toward either, her body language, including the swinging her hair and the movement of her hips, suggests that she may indeed have said something. In any event, Tobar stares at Gilbert walking down the sidewalk and makes a flippant gesture as if in reaction to something said or done by Gilbert; 7 seconds later, Cuevas begins reacting to Gilbert's departure by looking down the sidewalk in the direction in which the employee walked and then handing her cigarettes and picket sign to Tobar; and, at 10:55.40 p.m., while attempting to remove something from around her neck, Cuevas leaves the entrance area, jogging after Gilbert. Moments after Cuevas leaves the entranceway, Lemley walks over to where Tobar remains standing, and, after conversing with her for several seconds, at 10:55.53 p.m., hands her picket sign to Tobar and walks down the sidewalk in the same direction as Gilbert and Cuevas. At this point, carrying three picket signs, Tobar walks away from the entranceway but in the opposite direction; at 10:56.03 p.m. or 23 seconds after Cuevas went after Gilbert, without the picket signs, she again comes into view, jogging down the sidewalk in the same direction as the other women. Thereafter, 30 seconds later, at 10:56.33 p.m., Gilbert returns to the casino with her right hand covering the right side of her face, and, 32 seconds later, with an obvious grin on her face, Lemley returns to the front of the casino. With regard to her interrogation by a Las Vegas police officer, contrary to her testimony, one can hear Lemley denying to the officer having any knowledge as to the identities of the two alleged attackers or of what occurred.

²⁵ During cross-examination, Lemley testified that her intent in going after Cuevas was to stop her, but "I did not know that she was going to beat [the female employee] up." She later stated that she went after Cuevas not knowing what would happen and "hoping that nothing was happening."

²⁶ As to the victim of Cuevas' attack, according to Lemley, "I've never seen that girl before the day that I seen her on the ground." She specifically denied knowing that Gilbert was a casino greeter.

Finally, with regard to the attack upon Gilbert, Respondent's organizer, Daugherty, testified that, earlier in the evening on June 12, he had visited the Casino Royale picket line and met with Cuevas and another Hispanic picket, Elma Beltran, and that "I remember Anna pointing at someone in the casino And I asked [Elma] what was going on And she told me that Anna had been quite upset throughout the evening. This one woman had been saying things to her I remember telling Elma to tell Anna . . . just to keep focused on what we were doing." Later, according to Daugherty, he received a telephone call at home regarding an incident at the Casino Royale, and, during the next several days, he conducted an internal investigation and determined that Cuevas had been involved in a "physical confrontation" with a Casino Royale employee. As a result, according to Daugherty, he spoke to Cuevas and "barred her from any further picketing activities for the Union."

B. Legal Analysis and Conclusions

The instant complaints allege that, since December 31, 1991, Respondent has authorized the above-described picketing in front of the Casino Royale; that Respondent is responsible for the above-described alleged acts of misconduct; and that, thereby, Respondent engaged in acts and conduct violative of Section 8(b)(1)(A) of the Act. Succinctly stated, when a labor organization authorizes and establishes a picket line, it is required to retain control over the picketing, and, to the extent a labor organization fails or is unwilling to control the acts and conduct of its pickets, it must bear responsibility for their misconduct. *Teamsters Local 812 (Pepsi-Cola Newburgh)*, 304 NLRB 111, 114 (1991); *Boilermakers Local 1 (Union Oil)*, 297 NLRB 524, 526 (1989).²⁷ Generally, if a labor organization authorizes and exercises control over a picket line, oral or written instructions to pickets not to engage in such acts, "are not sufficient to absolve [it] of responsibility for [misconduct] committed by pickets on the picket line . . . during the course of an authorized strike." *Lithographers Local 235 (Henry Wurst, Inc.)*, 187 NLRB 490 at 490 (1970). Rather, in order to evade responsibility, upon becoming "fully aware" of alleged misconduct, a labor organization's obligation is to take "conscientious" and "serious" corrective measures, designed to "curtail" the acts and conduct, and to "fully and effectively repudiate" them. *Congreso Uniones Industriales (Rice Growers)*, 279 NLRB 626, 630 (1986); *Broadway Hospital*, 244 NLRB 341, 349 (1979); *Shopman's Local 455 (Stokvis Multi-Ton Corp.)*, 243 NLRB 340, 343 (1979); *Food & Commercial Workers Local 248 (Milwaukee Meat Packers)*, 222 NLRB 1023 (1976). Moreover, in determining responsibility for acts of misconduct, in the context of an authorized picket line, a labor organization is held responsible for the acts of its agents when committed within the scope of general authority and employment. *Longshoremen ILWU Local 6 (Sunset Line &*

²⁷ The record evidence is, and I find, that Respondent's picketing at the Casino Royale has been, since its inception, informational picketing, designed to inform the public that the Casino Royale has no collective-bargaining agreement with the Respondent. In his posthearing brief, counsel for Respondent concedes that publicity picketing "may" violate Sec. 8(b)(1)(A) of the Act "but only on proof that such misconduct is directed at (or has an effect on) employees' exercise of Section 7 rights."

Twine Co.), 79 NLRB 1487 (1948). In this regard, the Board has long held that picket captains who represent a labor organization in the general area of a strike are its agents and, thus, the labor organization is responsible for their acts, occurring within their general authority, even if not specifically authorized and specifically forbidden. *Daniel Finley Allen & Co.*, 303 NLRB 846, 864 (1991); *Milwaukee Meat Packers*, supra at 1034. Also, while individual members of a labor organization cannot be considered its agents, authorized pickets, who are paid, are, and a labor organization is responsible for their misconduct while engaged in picketing on its behalf. *Milwaukee Meat Packers*, supra.²⁸ Furthermore, Section 8(b)(1)(A) of the Act makes it unlawful for a labor organization to "restrain or coerce" employees in the exercise of their Section 7 rights, and the Board and the courts have long held that the test for determining restraint and coercion is "whether the misconduct is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act." *NLRB v. Service Employees Local 254*, 535 F.2d 1335, 1337-1338 (1st Cir. 1976); *Plumbers Local 38 (Bechtel Corp.)*, 306 NLRB 511, 518 (1992).²⁹ Finally, while, of course, Section 8(b)(1)(A) of the Act proscribes threats, violence, harassment, intimidation, and coercion of employees by a picketing labor organization, it also prohibits such misconduct when directed toward nonemployees so long as the acts were committed in the presence of employees, whose Section 7 rights might be affected or as the acts were sure to become known to employees and employees would "regard [them] as an indication of what may befall them if they fail to support the [picketing]." *Auto Workers Local 695 (T. B. Wood's)*, 311 NLRB 1328, 1337 (1993); *Meat Packers (Hormel & Co.)*, 291 NLRB 390, 395 (1988); *Teamsters Local 115 (Oakwood Chair)*, 277 NLRB 694, 698 (1985); *Lumber Workers Local 3171 (Louisiana-Pacific)*, 274 NLRB 809 (1985).

1. Videotaping and threats of bodily harm

Utilizing the foregoing principles, I turn first to consideration of the complaint allegations that Respondent's above-described videotaping of individuals and threats of bodily harm were violative of Section 8(b)(1)(A) of the Act. In these regards, I initially note that two threats of bodily harm were directed toward individuals, who were not employed by the Casino Royale—Denise Gulliver, the wife of a supervisor, and a customer, known as "Curtis." With regard to the former, Gulliver's account was uncontroverted and reliable, and I find that, late in the evening of April 17, as she approached within 10 feet of the south entrance to the casino, a large, black male picket, who was standing a few feet from her, began shouting through the electric bullhorn at her; that she responded he should get a job; and that a female

picket, who was standing with the male picket, responded by urging the male to "kick this white bitch's ass." In these circumstances, I further find that the female picket meant that her words be heard by Gulliver and that her utterance constituted a clear threat of injury to Gulliver for having challenged the male picket. *Auto Workers Local 695 (T. B. Wood's)*, supra. Moreover, as the record establishes that Respondent paid individuals for picketing at the Casino Royale and as picket captains were on duty throughout the day and night at its Casino Royale picket line, Respondent clearly must be held responsible for the threat uttered to Gulliver. *Milwaukee Meat Packers*, supra. However, inasmuch as there is no record evidence that any Casino Royale employees observed or heard what was said³⁰ or ever became aware of the incident, I am unable to find that the threat to Gulliver coerced or restrained any employee of the Casino Royale in violation of Section 8(b)(1)(A) of the Act. *Meat Packers (Hormel & Co.)*, supra; *Teamsters Local 115 (Oakwood Chair)*, supra.³¹

As to the incident involving "Curtis," the best record evidence of what occurred is, of course, the Charging Party's Exhibit 3, a videotape, which contains a sound recording of the confrontation between Terry Lemley and Curtis. Relying on the exhibit and to a lesser extent upon the testimony of Rocio Martinez,³² I find that, during the evening of October

³⁰ I am mindful that Gulliver testified that the free slot machine attendant was standing inside the casino next to the free slot machine. However, there is no record evidence that she heard what was said, and, given the noise level outside the casino and the fact that the female picket uttered her threat without use of the electric bullhorn, I do not believe that the attendant could have heard the threat or was even aware of the confrontation between Gulliver and the male picket.

³¹ Counsel for the General Counsel and counsel for the Charging Party argue that all of the instances of misconduct were committed either in the presence of the Casino Royale's greeters, may have been heard by employees inside the casino, or could reasonably have been reported back to other employees. Perhaps, in the absence of any specific record evidence that greeters or other employees, in fact, observed or overheard acts of misconduct or that somehow other employees became aware of what occurred, I shall not assume that employees observed, heard, or became aware of acts of misconduct or make any findings in that regard. Here, other than as set forth above, there is no record evidence that any employee, other than security personnel, of the Casino Royale witnessed any of the incidents alleged as unlawful or was even aware of their occurrence, and I do not believe that the nature of any misconduct here warrants a finding that employees must have witnessed the acts or heard about them. Moreover, given the noise level on Las Vegas Boulevard, the fact that much of the alleged unlawful conduct consists of sound emanating from electric bullhorns, does not mean that employees, who were working inside the casino, necessarily would have heard what was said.

³² For my findings, I do not rely on the beguiling testimony of Edith Everett, whose account of the incident depicts Lemley constantly interrupting her conversation with Curtis without any dialogue between Lemley and Curtis or that of Terry Lemley, whose assertion that, after their verbal confrontation, Curtis came out of the casino, pushed her and then hit with the electric bullhorn, was not corroborated by either Martinez, who could not recall such an attack and would have if it occurred, or Nellie Krasney, who specifically denied that such an attack occurred, and appeared to be a clear fabrication. Likewise, I do not believe the assertion of both Lemley and Krasney that, at one point, the male customer yelled out to Lemley

Continued

²⁸ It is, of course, not necessary to determine the exact picket, who engaged in the misconduct, as long as the acts were committed during picketing. *Milwaukee Meat Packers*, supra; *Boilermakers Local 696 (Kargard Co.)*, 196 NLRB 645, 650 fn. 11 (1972).

²⁹ The central issue involved in any alleged violation of Sec. 8(b)(1)(A) of the Act is the relationship between the conduct and a respondent's antipathy toward employees' Sec. 7 rights. Put another way, there must be "an unmistakable nexus" between the misconduct and a respondent's restraint and coercion of employees' Sec. 7 rights. *Laborers Local 806*, 295 NLRB 941, 962 (1989).

24, while Lemley picketed with the electric bullhorn outside the main, pillared sidewalk entrance to the casino and shouted her message, "pass on by," to pedestrians, a male voice, from inside the casino, yells to her "Don't you ever get bored"; that Lemley replies she had been sent to jail five times that week and shouts "Want to go with me this time, scumbag"; that, although inaudible due to the surrounding noise level, the verbal confrontation between the customer and Lemley continued; and that, after a few moments, Lemley yells into the casino "You're going to the hospital" and, subsequently and obviously in response to an inaudible comment from inside the casino, shouts through the bullhorn into the casino "You don't ever underestimate me" and "You're f—king with the wrong person." Based on the foregoing, I am convinced that, while Respondent must be held responsible for picket captain Lemley's conduct and although her remarks may be considered intemperate and perhaps threatening, the male customer, who was inside the casino, instigated the confrontation, and Lemley's conduct clearly was provoked by him. In these circumstances, notwithstanding that Edith Everett may have witnessed Lemley's confrontation with the customer, the latter's conduct was not violative of Section 8(b)(1)(A) of the Act. *Carpenters Philadelphia District Council (Delran Builders)*, 307 NLRB 172 (1992); *Laborers Local 806*, supra; *Plumbers Local 138 (Bechtel)*, supra.

Regarding the incidents involving former Casino Royale security guard, Mark Wilcox, security guard, Kenneth Cheatham, and former shift manager, Harvey McCoy, I note, at the outset, that the testimony of each was uncontroverted and credible. Accordingly, I find that, on July 22, at an entrance door, McCoy heard an "Afro-American" male picket shout through the electric bullhorn at a security guard, who was inside the casino, "[I]f you don't like what I'm saying, you can come out and get with me or get some of this"; that the picket noticed McCoy and called him "the new head nigger in charge"; that McCoy replied that the picket was out of line; and that the picket responded by inviting McCoy to "come out and get with me if you don't like it." As to Wilcox, I find that, on August 13, he approached Robert Shafer, the Casino Royale's head of security, outside the new south entrance to the Casino Royale and stood next to him and that an Hispanic male picket spotted Wilcox and shouted, "[W]e know who you are, we will get you." Concerning Cheatham, I find that, in the afternoon of September 24, he was outside on the sidewalk videotaping the picketing; that he observed a verbal confrontation between a union representative, Kevin Kline, and a customer regarding the former's use of the bullhorn; that Cheatham moved closer to them in order to record the incident; and that, as he did so, a large, Hispanic male picket stepped in front of Cheatham, swung his picket sign at the video camera, and warned "if you want some sign, I can give it to you. Finally, with regard to the three above-described incidents, there is no record evidence that any individuals, employed by the Casino Royale in the job classifications usually represented by Respondent, witnessed or ever became aware of what occurred.

that he was going to come after her and beat her over the head with her bullhorn. As to this, I note that none of Lemley's recorded responses or comments fit such a threat.

There can be no question that the respective threats to McCoy, Wilcox, and Cheatham constituted threats of bodily harm and that, as the threats were uttered by pickets, who were being paid by Respondent, in the presence of picket captains or officials of the labor organization, Respondent must be held responsible for the conduct. Nevertheless, I do not believe that the threats of bodily harm were violative of Section 8(b)(1)(A) of the Act. Thus, with regard to the threat uttered against McCoy, as with acts of picket line misconduct directed against nonemployees by a labor organization, such conduct, directed at supervisors, only may reasonably be expected to coerce or restrain employees, who either witness the conduct or hear about what occurred and regard such as an indication of what could happen to them if they fail to support that labor organization's picketing. *Auto Workers (T. B. Wood's)*, supra. Regarding the threats against Wilcox and Cheatham, notwithstanding that security guards may be employees within the meaning of Section 2(3) of the Act and may be represented in all-guard bargaining units, for purposes of picket line misconduct allegedly violative of Section 8(b)(1)(A) of the Act,³³ acts of intimidation directed against security guards are treated in the same manner as acts directed against nonemployees and supervisors—the conduct only may reasonably be expected to coerce and restrain employees, who witness or hear about it and regard the misconduct as an indication of what may happen to them if they fail to support the picketing. *Auto Workers 695 (T. B. Wood's)*, supra; *Teamsters Local 507 (Klein News)*, 306 NLRB 118, 142 (1992); *Lumber Workers 3171 (Louisiana Pacific)*, 274 NLRB 809, 815 (1985).³⁴ Here, there is no record evidence that any individual, who was employed by the Casino Royale in a job classification usually represented by Respondent, witnessed or ever became aware of the threat of bodily harm against McCoy, and there is no record evidence that any individual, who was employed by the Casino Royale in a job classification, which Respondent normally represents, witnessed the Wilcox incident or the Cheatham incident or became aware of what occurred. In these circumstances, I find that neither of these three acts of picket line misconduct was violative of Section 8(b)(1)(A) of the Act.

While the above incidents, involving threats of bodily harm uttered by Respondent's pickets, were not violative of the Act, two other such incidents do appear to involve unlawful misconduct. Thus, Casino Royale security guard, Albert Glen Vaught, credibly testified that, during the evening of June 10, he heard a picket, who he called "Terry," shout through an electric bullhorn into the casino, "[W]e know who you are and we know where you live." As to the incident, Terry Lemley conceded shouting at an employee, named "Cindy," who was working inside the casino at the time, "we're going to get you. We know where you live;"

³³The Casino Royale security guards could not, of course, be included in any bargaining unit encompassing the Casino Royale employees, who would likely be represented by Respondent.

³⁴In *T. B. Wood's*, a violation of Sec. 8(b)(1)(A) of the Act was found when a security guard was struck in the back by an object based on record evidence that such occurred in the presence of striking employees, and, in *Louisiana Pacific*, no violation was found when a union vice president fired a flare, which struck a company shed a few feet over the head of a security guard and no employees, whose Sec. 7 rights might have been affected, were present.

however, she asserted that the employee had been poking fun at her weight during the evening and that such had angered her. As manifested by, what I believe was, her fabricated testimony that a customer had physically attacked her on October 24, taking the oath prior to testifying obviously failed to deter Lemley from dissembling in order to buttress Respondent's contentions here, and I do not credit her foregoing explanation for her misconduct. Inasmuch as Lemley's admitted comments to the Casino Royale employee Cindy were unprovoked and as such constituted implicit threats of bodily harm, I find that Lemley's acts, for which, given her position as picket captain, Respondent was responsible, were violative of Section 8(b)(1)(A) of the Act. *Auto Workers 695 (T. B. Wood's)*, supra.³⁵

With regard to the alleged threat of bodily harm, uttered against greeter, Amber Gilbert, on June 11, I credit the testimony of Gilbert, who appeared to be testifying in a candid manner as to this incident, over that of Elma Beltran, who, although not an unimpressive witness, was not as persuasive as Gilbert. Accordingly, I find that, during the evening of June 11, while Gilbert worked as a greeter on the sidewalk in front of the casino, two female Hispanic pickets pointed at her and one, probably Cuevas, said, in English, that "they were going to get me"; that the threat was unprovoked by anything done or said by Gilbert; and that, as the individuals, who picketed on behalf of Respondent were paid by the latter, Respondent must be held responsible for this act of misconduct. The Board has held that threats "to get" employees are thinly veiled threats of unspecified harm and coercive within the meaning of Section 8(b)(1)(A) of the Act. *Auto Workers 695 (T. B. Wood's)*, supra. Here, the employees of the Casino Royale clearly would understand such a threat as a warning against not supporting the picketing and continuing to work for the Casino Royale. Accordingly, Respondent's threat "to get" Gilbert was violative of Section 8(b)(1)(A) of the Act.

I turn next to the incident of September 17 and the matter of the pickets' penchant for pointing a video camera at the greeter, Edith Everett, and apparently videotaping her while she performed her job duties. In this regard, Everett was uncontroverted that, on the above date, a male picket pointed a video camera at her and apparently recorded her activities for approximately 5 minutes. Respondent's official, Daugherty, stated that pickets would utilize a video camera to record instances of potential confrontation, and Terry Lemley conceded that pickets videotaped Everett whenever she conversed with individuals, whom the pickets suspected of distributing pornographic literature. However, not only do I place little credence in the untrustworthy testimony of Lemley but also I note that she also conceded that, on occa-

sion, pickets feign videotaping Everett by pointing an empty camera at her. In these circumstances, I believe that actual intent of the pickets has been to coerce and intimidate her and to cause her to fear retribution for working in the face of Respondent's picketing. Therefore, any actual or apparent videotaping of Everett by Respondent's pickets was violative of Section 8(b)(1)(A) of the Act, and I so find. *Auto Workers (T. B. Wood's)*, supra at 1336.

2. The bullhorn assaults

Counsel for the General Counsel and counsel for the Charging Party next contend that the 10 above-described so-called bullhorn assaults here, directed at Edith Everett, security guard Cheatham, potential customers, and pedestrians, were violative of Section 8(b)(1)(A) of the Act. With regard to these allegations, while the respective testimony of each of the pedestrians and potential customers (Benjamin Jeffries, Shereen Craythorne, Barbara Phelps, Thomas Paddock, Thomas Wanko, Helen Buford-Taber, and Frederick Whitehead) was not specifically denied and while each individual was a disinterested witness and appeared to be testifying honestly to the best of his or her recollection, resolution of their respective credibility is problematical. Thus, use of an electric bullhorn in the manner described by the above witnesses was generally denied by Respondent's witnesses. Further, noting that, despite the Charging Party's extensive surveillance camera system at the Casino Royale's entrances, neither the General Counsel nor the Charging Party produced any videotape evidence of any of the so-called bullhorn assaults, counsel for Respondent argues that the Casino Royale's surveillance camera must have photographed several, if not all, of these incidents and that, rather than due to "bad luck" resulting from poor camera angles, the failure of counsel for the General Counsel or counsel for the Charging Party to offer any of the surveillance videotapes as corroboration suggests that the surveillance videotapes failed to support the witness' accounts or that the witnesses exaggerated their claims of assault. At the hearing, I expressed skepticism at the lack of supporting videotape evidence, and, while I remain perplexed that none of the alleged incidents seem to have been captured by a surveillance camera,³⁶ after careful examination of the record and in view of the inherent credibility of each of the seven disinterested witnesses, I feel compelled to rely upon the testimony of each and to find that the acts and conduct, about which each testified, occurred.

Accordingly, I find that, on March 26, as Jeffries passed by the Casino Royale, a female picket placed a bullhorn within inches of his face and, through it, shouted "obscenities that you shouldn't go in;" that, on August 23, as Paddock stood on the sidewalk in front of the Casino Royale peering up at the facade, a picket placed an electric bullhorn next to his right ear and shouted "bad luck if you go into the casino"; that, on September 17, as Wanko stood in line at the main entrance in order to pull the free slot machine,

³⁵ Counsel for Respondent argues that even if misconduct occurred, Lemley's threat may not be found violative of Sec. 8(b)(1)(A) of the Act as such neither was directed at any exercise of Sec. 7 right by Casino Royale employees nor had any effect on Sec. 7 activities. However, contrary to counsel, the obvious Sec. 7 right, involved in all the alleged incidents herein, is an individual's right to cross Respondent's picket line and work free from restraint and coercion. Thus, as with any of the conduct herein which was directed at customers, who contemplated entering the Casino Royale, the clear message to Cindy was that she was endangering herself by crossing Respondent's picket line and continuing to work at Casino Royale.

³⁶ Beyond counsel for the Charging Party's conjectures, there is no record evidence that surveillance videotapes of the incidents, involving the above individuals, exist or ever existed, and, while such a conclusion seems inconceivable, absent contrary evidence, including that the Casino Royale security officials reviewed and discarded inconclusive or noncorroborative videotapes, it appears to be the proper view of the record.

a picket placed an electric bullhorn no more than 6 inches behind his left ear and shouted that he should not go inside the Casino Royale to gamble and called him a "fucking fat ass"; that, on October 9, as Burford-Taber walked past the north entrance to the casino, a female picket placed an electric bullhorn within 10 inches of her face and caused the mechanism to emit a siren sound; and that, on October 29, as Whitehead and two companions were about to enter the Casino Royale, a picket moved within "a couple of feet" of him and shouted through a bullhorn into his left ear. I further find that none of these incidents was provoked by the pedestrian or customer and that each involves a deliberate attack upon the victim's sense of hearing.³⁷ Similar conduct, such as pickets pursuing a retail store's customers down a sidewalk and shouting at them within inches of their ears and unprovoked use of a mirror, by pickets, to reflect sunlight into the eyes of individuals, who attempted to cross a picket line, in order to impair their sight, has been found to constitute the type of conduct, which may be violative of Section 8(b)(1)(A) of the Act (*Maywood Pant of Grede Plastics*, 235 NLRB 363, 383 (1978); *Retail Wholesale Union District 65 (Eastern Camera & Photo Corp.)*, 141 NLRB 991, 994 (1963)), and, inasmuch as it paid individuals to picket on its behalf in front of the Casino Royale, Respondent must be held responsible for the above-described misconduct. However, as with the threats of bodily harm directed against non-employees, described above, there is no record evidence that any individuals, who were employed by the Casino Royale in job classifications normally represented by Respondent, witnessed or ever became aware of any of the unprovoked bullhorn attacks on pedestrians and customers. *Auto Workers 695 (T. B. Woods)*, supra.³⁸ In these circumstances, I find that Respondent's acts of misconduct were not violative of Section 8(b)(1)(A) of the Act.

With regard to the April 17 and October incidents, involving security officer Cheatham, his testimony as to each inci-

³⁷ These assaults must be distinguished from the April 7 incident, involving Craythorne and Phelps, which, rather than being an unprovoked and deliberate attack by a picket utilizing the bullhorn noise as a weapon, appears to have been an argument or confrontation between a picket, who was using the bullhorn, and Craythorne and her husband, each of whom wanted the picket to refrain from shouting through the bullhorn. Likewise, the April 30 incident, about which Chief of Security Shafer testified, appears to have been an instance of Union Official Daugherty shouting through a the electric bullhorn as a group of pedestrians was passing within 5 feet of him and not an unprovoked attack upon the senses of each person. Further, Shafer could not be certain as to whether Daugherty deliberately aimed his bullhorn at the pedestrians. In these circumstances, what Shafer observed appears to have been an instance of pedestrians covering their ears so as to muffle unwelcome noise in an enclosed area and not the deliberate type of assault as described by the other witnesses. In these circumstances, I shall recommend dismissal of the complaint allegations concerning the April 7 and 30 incidents.

³⁸ I am mindful of the rambling and entertaining testimony of Edith Everett; however, for reasons explained infra, I do not place much reliance upon her recollection of events. Moreover, while she testified that she witnessed pickets using bullhorns in the manner of a weapon, she further stated that such occurred subsequent to October, a period not covered by the instant complaints, and counsel for the General Counsel declined to move to amend any of the complaints to include the incidents about which she vaguely testified. Accordingly, I shall not rely upon her testimony or make any findings based upon it.

dent was uncontroverted and reliable. Accordingly, I find that, on April 17, while outside on the sidewalk videotaping the use of a bullhorn by one of Respondent's pickets, Cheatham would, from time to time, attempt to record the reactions of pedestrians to the noise and that, whenever he did so, the picket walked over to him, placed the bullhorn no more than 6 inches from Cheatham's ear, and screamed as loud as he could. Further, I find that, one day in October, while attempting to record messages, emanating from a boom-box used by the pickets, several pickets surrounded Cheatham and one pressed an electric bullhorn against Cheatham's video camera and pressed the siren mechanism three successive times. Given Respondent's pickets' use of the bullhorn toward pedestrians and potential customers, it can not be said that Cheatham lacked business justification for videotaping the activities of the pickets, and, therefore, it can not be said that Cheatham in any way provoked the pickets' acts on either of the above two occasions. Rather, the pickets' use of an electric bullhorn against him appear to have been deliberate acts of misconduct, designed to discourage him from continuing to engage in legitimate surveillance of their conduct while picketing, and, as with the assaults upon pedestrians and potential customers, conduct which may be violative of Section 8(b)(1)(A) of the Act. Further, of course, as individuals were picketing on Respondent's behalf and being paid for their efforts, Respondent must be held responsible for their misconduct. However, as with the threats of bodily harm directed against him, for purposes of violations of Section 8(b)(1)(A) of the Act, as a security guard, he is treated in the same manner as a supervisor or a nonemployee, and there is no evidence that any individuals, who are employed by the Casino Royale in job classifications normally represented by Respondent, witnessed the above-described incidents or ever became aware of them. In these circumstances, I must conclude that, while the pickets may have engaged in misconduct as to Cheatham, their actions were not violative of Section 8(b)(1)(A) of the Act. *Auto Workers Local 695 (T. B. Wood's)*, 311 NLRB 1328 (1983); *Teamsters Local 507 (Klein News)*, supra; *Wood Workers 3171 (Louisiana Pacific)*, supra.

Finally, I consider the alleged bullhorn assault upon Edith Everett. With regard to this incident, I note that counsel for the General Counsel felt required to lead Everett to a date and that, notwithstanding such assistance, the witness averred that the date was "not registering" with her. Then, after being shown her pretrial affidavit, Everett never directly responded as to whether she could recall the incident occurring on the date suggested by counsel for the General Counsel. With regard to the incident itself, I note that, as to the October 24 verbal confrontation between Terry Lemley and a customer, Everett's testimony was contradicted by the videotape recording of the incident. Accordingly, I concluded that I could not rely upon her testimony as to what occurred, and, likewise, I have no confidence in her veracity or accuracy as to this alleged incident. In these circumstances, notwithstanding that her testimony was uncontroverted, I can not rely upon Everett's uncorroborated testimony, and shall recommend dismissal of the applicable complaint allegation.

3. The physical assaults

Two physical assaults are alleged as violative of Section 8(b)(1)(A) of the Act—the May 1 physical confrontation be-

tween Terry Lemley and a customer, Peter Kuhn, and the June 11 assault and battery against greeter, Amber Gilbert. With regard to the former, I rely entirely upon the testimony of Peter Kuhn, who impressed me as being an honest and straightforward witness and note that he was corroborated on salient points by Wendy Wood and Amber Gilbert, each of whom, likewise, appeared to testifying truthfully as to this incident. In contrast, as set forth above, Lemley impressed me as being a disingenuous witness, one who would willing dissemble in order to buttress Respondent's position at trial. Accordingly, I find that, on the evening of May 1, Kuhn and his wife approached the Casino Royale on the sidewalk and decided to go into the casino; that, as they turned to enter, Lemley was shouting at them, through an electric bullhorn, that they should not patronize the casino; that Kuhn turned to Lemley and asked why she was being so obnoxious; that Lemley then approached within 2 or 3 feet of Kuhn's face and again shouted through the bullhorn at him; that Kuhn pushed the bullhorn away, causing the bullhorn to strike Lemley in the face; that Lemley raised the bullhorn as if to hit Kuhn; that Kuhn grabbed the bullhorn; and that, thereupon, Lemley kicked him by his left knee. In my view, Respondent's picket captain clearly was the aggressor in the physical confrontation by approaching close to Kuhn,³⁹ deliberately placing the bullhorn within 2 or 3 feet of his face, and shouting at him through it. Further, the fact that Kuhn pushed the bullhorn away from his face and then grabbed the implement in order to prevent her from hitting him with it did not serve to justify her retaliatory act of kicking him in the knee.⁴⁰ In short, I believe that Lemley's conduct was inexcusably aggressive and that she instigated the physical confrontation, in part, to dissuade Kuhn and his wife from entering the casino. Physical contact, including bumping customers, who cross a picket line and attempt to enter a retail store, into the display windows has been found to constitute the type of conduct, which may be violative of Section 8(b)(1)(A) of the Act (*Retail Wholesale Union District 65*, supra at 993), and Lemley's acts and conduct on May 1 clearly fall within the range of proscribed physical contact. Moreover, given Lemley's status as a picket captain, Respondent was clearly responsible for her misconduct. Finally, Lemley's misconduct was witnessed by employees, Wendy Wood and Amber Gilbert, and I believe that each could not help but understand that she would receive similar treatment if she failed to support Respondent's picketing.

Accordingly, I find that Respondent engaged in conduct, violative of Section 8(b)(1)(A) of the Act, when Lemley attacked Peter Kuhn on May 1. *Auto Workers 695 (T. B. Wood's)*, supra at 1337; *Retail Wholesale Union District 65*, supra at 993.

There is no dispute that, just 5 weeks later, Amber Gilbert herself was assaulted and beaten a short distance from the Casino Royale and that, at least, one individual, Anna Cuevas, who was picketing on behalf of Respondent, participated in the attack. What is in dispute concerns the participation of a second picket, Alba Tobar, in the attack against Gil-

bert and whether the attack was violative of Section 8(b)(1)(A) of the Act. In this regard, my analysis of the videotape of the scene in front of the south entrance to the Casino Royale during the evening of June 12 and of the testimonial demeanor of the witnesses has convinced me that, of the witnesses who testified with regard to the events of that night, only Alba Tobar gave essentially candid and accurate testimony, and, along with the videotape, I shall rely upon her testimony in making findings as to what occurred. Accordingly, I find that, earlier in the evening, Gilbert laughed at and taunted Cuevas and Tobar, each of whom was picketing on behalf of Respondent, and Cuevas responded, warning that she, Cuevas was waiting for Gilbert; that, at 10:55 p.m. upon leaving the casino, given her body language as she turned left and walked down the sidewalk and the instantaneous, flippant reaction of Tobar, Gilbert likely muttered "fucking Mexican" as she passed between Tobar and Cuevas;⁴¹ that her earlier actions and what she said were reactions to Cuevas' threat of unspecified harm of the previous evening; that Cuevas reacted instantaneously, handing her picket sign and cigarettes to Tobar and chasing after Gilbert; that, 13 seconds later, after speaking to Tobar and ascertaining that there was going to be a fight, Terry Lemley, who had observed Cuevas' conduct, walked down the sidewalk after Cuevas; that 23 seconds later, Tobar jogged down the sidewalk in the direction taken by Gilbert and Cuevas; that, 30 seconds after Tobar moved out of camera range, Gilbert returned to the hotel with her right hand covering the right side of her face; and that, 32 seconds later, Lemley, exhibiting an obvious grin, returned to the front of the casino. Further, given the aforementioned time sequence, as there appears to have been insufficient time for Tobar to have participated in the attack upon Gilbert,⁴² I find merit in Respondent's contention that Cuevas alone attacked and battered Gilbert and conclude that the latter's assertion, that she had been attacked by the same two individuals, who had threatened her the night before and were picketing outside the south entrance that night, is untenable and not worthy of belief.

The question remains as to whether, in these circumstances, Respondent engaged in conduct violative of Section 8(b)(1)(A) of the Act. In this regard, as Cuevas had been compensated for picketing by Respondent and picket captain, Terry Lemley, was present at the time, it is clear, and I find, that Respondent must be held accountable for Cuevas' attack upon Gilbert. However, while perhaps tortious and criminal, a determination as to whether Cuevas' assault is violative of the Act depends upon the existence of a nexus between the attack and Gilbert's exercise of her Section 7 rights. In this

⁴¹ Given what I believe to be Gilbert's fabricated testimony as to this incident, her denial that she uttered this epithet is just not credible. Thus, not only do I believe that she dissembled as to who attacked her but also I note that Gilbert claimed that her attackers kicked her in her back, bruising the area. However, in testifying with regard to the extent of Gilbert's injuries, Frances Rae Jean Wilson contradicted Gilbert, stating that the latter complained about injuries only to her face and "didn't seem to have any other problem."

⁴² Tobar's testimony that she passed Gilbert as the latter was returning to the Casino Royale appears to be truthful. Thus, only 30 seconds elapsed between the time Tobar left the entrance to the casino and Gilbert appeared, and it is highly improbable that the attack upon the latter occurred in that period of time.

³⁹ The fact that Kuhn termed her use of the bullhorn "obnoxious" did not, in my view, justify her resulting acts and conduct.

⁴⁰ While, as Kuhn pushed the bullhorn away from his face, the bell of the bullhorn may have struck Lemley's face, she clearly instigated what occurred and was not justified in retaliating.

regard, while I am mindful that Cuevas had threatened "to get" Gilbert the night before, given the persuasive and compelling videotape evidence, I am convinced that Cuevas' conduct was spontaneous, precipitated by Gilbert's racial slur as the latter walked out of the casino and passed by her and, perhaps, by Gilbert's earlier taunting and was not related to Gilbert's exercising of her Section 7 rights. *Carpenters Philadelphia District Council (Delran Builders)*, 307 NLRB 192 (1992); *Plumbers Local 38 (Bechtel Corp.)*, 306 NLRB 511 (1992). Furthermore, by immediately, upon becoming aware of her misconduct, barring Cuevas from any further picketing on its behalf, Respondent undertook conscientious efforts, which effectively repudiated her misconduct. In these circumstances, I must conclude that, no matter how reprehensible Cuevas' attack upon Gilbert may have been or Respondent's responsibility for it, the conduct was not violative of Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. Casino Royale, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Between May 1 and September 17, in the course of its informational and publicity picketing activities on the sidewalk in front of the entrances to the Casino Royale, Respondent violated Section 8(b)(1)(A) of the Act by:

(a) Stating that it knew where the employees of the Casino Royale lived and that it was going to get them, thereby implicitly threatening employees of the Casino Royale with

bodily harm because they failed to support Respondent's picketing and continued to work for the Casino Royale.

(b) Videotaping or creating the appearance of videotaping an employee of the Casino Royale, who was performing her job duties, in order to cause employees of the Casino Royale to fear retribution for failing to support Respondent's picketing and continuing to work for the Casino Royale.

(c) Physically assaulting a potential customer in the presence of employees of the Casino Royale at or near its picket line, thereby causing the employees to fear like retribution for failing to support Respondent's picketing and continuing to work for the Casino Royale.

4. Other than set forth above, Respondent engaged in no other acts or conduct violative of Section 8(b)(1)(A) of the Act.

5. The above-described unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist from engaging in the acts and conduct and to take certain affirmative action designed to effectuate the policies of the Act.⁴³

[Recommended Order omitted from publication.]

⁴³ Given my findings and conclusions with regard to Respondent's unfair labor practices, I believe the standard Board remedy is sufficient and do not adopt counsel for the Charging Party's recommendations in this regard.